

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

SPACESAVER CORPORATION

Plaintiff,

v.

Civil Action No. 09-cv-00095-slc

THE MARVEL GROUP, INC.

Defendant.

**THE MARVEL GROUP, INC.'S MOTION FOR SANCTIONS DUE TO
SPACESAVER'S INTENTIONAL DESTRUCTION OF DOCUMENTS**

Defendant, The Marvel Group, Inc. ("Marvel"), by its undersigned attorneys, respectfully moves this Court, pursuant to Rule 37 of the Federal Rules of Civil Procedure and this Court's inherent sanctioning authority, to enter an order dismissing Plaintiff Spacesaver Corporation's ("Spacesaver's") second amended complaint with prejudice as a result of a key Spacesaver employee's admission that she has knowingly and repeatedly deleted emails that are directly relevant to crucial issues in this litigation. In the alternative, this Court should enter some other discovery sanction, like an adverse inference instruction, against Spacesaver. In support of its motion, Marvel states as follows:

As Marvel explains in its supporting memorandum, on August 24, 2009, Marvel took the deposition of Spacesaver employee Jane Glass ("Glass"), the Spacesaver employee who has been in charge of communicating with Spacesaver's dealer network and customers and managing Spacesaver's universal weapon rack product since the early stages of its development in 2000, and learned that, even now, Glass regularly deletes her email correspondence with Spacesaver's weapon rack dealers and customers, despite the obvious relevance of these emails to this case.

Because Spacesaver has knowingly destroyed evidence that could have been crucial to Marvel's defense, Spacesaver's lawsuit should be dismissed or, in the alternative, a lesser sanction, like an adverse inference instruction, should be imposed. Because Spacesaver's counsel designated certain portions of the Glass deposition transcript as being "Highly Confidential – Attorneys' Eyes Only", the memorandum filed in support of this motion will be filed under seal.

WHEREFORE, Defendant The Marvel Group, Inc. respectfully moves this Court to enter an order dismissing Plaintiff Spacesaver Corporation's second amended complaint with prejudice or some other discovery sanction, like an adverse inference instruction, against Spacesaver.

Respectfully submitted,

THE MARVEL GROUP, INC.

By: /s/ Eric E. Newman
One of Its Attorneys

Theodore J. Long
Lathrop & Clark LLP
740 Regent Street, Suite 400
Madison, WI 53715
Tel.: 608-257-7766
Fax: 608-257-1507

Jack J. Carriglio (IL #0400254)
Eric E. Newman (IL #6243572)
Meckler Bulger Tilson Marick & Pearson LLP
123 N. Wacker Drive, Suite 1800
Chicago, IL 60606
Tel.: 312-474-7900
Fax: 312-474-7898

Leland W. Hutchinson, Jr. (IL #1294873)
Jennifer L. Fitzgerald (IL #6229243)
David L. Ter Molen (IL #6270715)
Matthew J. Kramer (IL #6283296)

Freeborn & Peters LLP
311 S. Wacker Drive, Suite 3000
Chicago, IL 60606
Tel.: 312-360-6000
Fax: 312-360-6520

Dated: September 8, 2009

M:\13121\pleading\2009 Trademark Case\glass-sanctions-motion.doc